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8 Attorneys for Complainant

9 **BEFORE THE**
10 **OFFICE OF ADMINISTRATIVE HEARINGS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition Against:

13 **PAUL FULGENICO ZUNIGA AVENDANO**
14 **a.k.a. FULGENCIO Z. AVENDANO and**
15 **CARLOS A. DEL ROSARIO**

16 4858 Estepona Way
17 Buena Park, CA 90621

18 Vocational Nurse License No. VN 120583

19 Respondent.

Case No. VN-2007-1392

OAH No.

STIPULATED ORDER FOR
INTERIM SUSPENSION OF
LICENSE

[Bus. and Prof. Code, § 494]

Date:

Time:

Location: OAH

1350 Front St., Rm. 6022
San Diego, CA 92101

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21
22 **IT IS HEREBY STIPULATED** by and between the parties, Teresa Bello-Jones,

23 Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, represented
24 by Edmund G. Brown Jr., Attorney General of the State of California, by Kathleen B.Y. Lam,
25 Deputy Attorney General, and Respondent Paul Fulgenico Zuniga Avendano, represented by
26 Fredrick M. Ray, Esq., Attorney at Law, to the following:

27 1. Pursuant to Penal Code section 494(b), cause exists to issue the interim
28 suspension order set forth hereafter;

2. Respondent waives his right to a hearing on the petition pursuant to Business and Professions Code section 494(c);

3. Respondent stipulates to the suspension of his Vocational Nurse License No. VN 120583 pending a hearing of Accusation No. VN-2007-1392; and

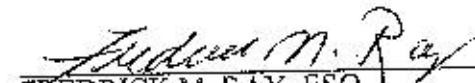
4. Respondent waives his right to a hearing within the statutory time deadline that requires that a hearing on the Accusation be held within thirty (30) days following the issuance of an interim suspension order.

IT IS SO STIPULATED.

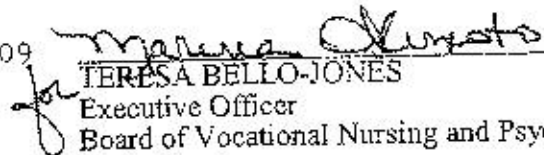
DATED: 1/22/09


PAUL FULGENICO ZUNIGA AVENDANO
Respondent

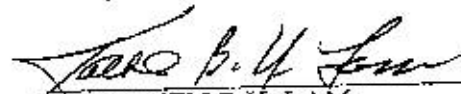
DATED: 1/22/09


FREDRICK M. RAY, ESQ.
Attorney at Law
Attorney for Respondent Avendano

DATED: January 20, 2009


TERESA BELLO-JONES
Executive Officer
Board of Vocational Nursing and Psychiatric
Technicians
Complainant


DATED: 1/27/08


KATHLEEN B.Y. LAM
Deputy Attorney General

Attorney for Complainant Teresa M. Bello-Jones
Executive Officer of the Board of
Vocational Nursing & Psychiatric Technicians

1 IT IS SO ORDERED pursuant to the above Stipulation, that Respondent Paul Fulgenico
2 Zuniga Avendano's Vocational Nurse License No. VN 120583 is suspended until a final decision
3 on Accusation No. VN-2007-1392 becomes effective, or until the existing interim order is
4 modified or vacated.

5 DATED: 2/2/09

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8 ALAN ALVORD
9 Presiding Administrative Law Judge
10 Office of Administrative Hearings
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FILED

DEC 29 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

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of the State of California
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9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
11 **BUREAU OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN-2007-1392

13 PAUL ZUNIGA AVENDANO
14 7241 Kensington Drive
Buena Park, CA 90621

A C C U S A T I O N

15 Vocational Nurse License No. VN 120583

16
17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about May 9, 1984, the Bureau of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 120583 to Paul Zuniga
25 Avendano (Respondent). The Vocational Nurse License expired on July 31, 2007, and has not
26 been renewed.

27 ///

JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Vocational Nursing and Psychiatric Technicians (Bureau), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Bureau may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

6. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

STATUTORY PROVISIONS

7. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

1
2 (k) The commission of any act punishable as a sexually related crime, if
3 that act is substantially related to the duties and functions of the licensee.
4

5 8. Section 2878.8 of the Code states:

6 The board may deny any application or may suspend or revoke any license
7 issued under this chapter [the Vocational Nursing Practice Act] based upon the
8 denial of licensure, suspension, restriction, or other disciplinary action of a license
9 by another state, any other government agency, or by another California health
care professional licensing board. A certified copy of the finding shall be
conclusive evidence of that action provided that, if from another state, the findings
establish an act which if committed in California would be grounds for discipline.

10 9. Section 490 of the Code provides, in pertinent part, that the Board may
11 suspend or revoke a license when it finds that the licensee has been convicted of a crime
12 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

13 10. California Code of Regulations, title 16, section 2521, states:

14 For the purposes of denial, suspension, or revocation of a license pursuant
15 to Division 1.5 (commencing with Section 475) of the Business and Professions
16 Code, a crime or act shall be considered to be substantially related to the
17 qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to
perform the functions authorized by his license in a manner consistent with the
public health, safety, or welfare. Such crimes or acts shall include but not be
limited to those involving the following:

18 (a) Procuring a license by fraud, misrepresentation, or mistake.

19 (b) A conviction of practicing medicine without a license in violation of
20 Chapter 5 of Division 2 of the Business and Professions Code.

21 (c) Violating or attempting to violate, directly or indirectly, or assisting in
22 or abetting the violation of, or conspiring to violate any provision or term of
Chapter 6.5, Division 2 of the Business and Professions Code.

23 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
24 whether a licensed physician or not, in the performance of or arranging for a
violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
Business and Professions Code.

25 (e) Conviction of a crime involving fiscal dishonesty.

26 (f) Any crime or act involving the sale, gift, administration, or furnishing
27 of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022
28 of the Business and Professions Code.

11. California Code of Regulations, Title 16, section 2522.5 states:

(a) When considering the suspension or revocation of a license on the ground that a licensed vocational nurse has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

....

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime - November 9, 2007)

13. Respondent is subject to disciplinary action under sections 2878, subdivision (f) and 490 of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions or duties of a vocational nurse. The circumstances are as follows:

14. On or about July 31, 2006, John Doe, a 16 year old male, was walking to school at approximately 9:25 a.m. Respondent, who was driving his vehicle, stopped his car and asked John Doe where he was going and if he wanted a ride. John Doe got inside the car. Once in the car, respondent asked John Doe how old he was and whether he had sex before. Respondent asked John Doe if he masturbated, how "big" he was, and wanted to know the size

1 of his penis. Respondent told John Doe he would give him \$20 if he allowed respondent to give
2 him a "blow job." Respondent drove past two school driveways. After John Doe told him he
3 had passed the driveways, Respondent made a U-turn and drove into the parking lot of the
4 school, and John Doe exited the vehicle. John Doe memorized the license plate number of the
5 vehicle while the respondent drove away.

6 15. A criminal complaint was filed on September 18, 2006, in *People of the*
7 *State of California v. Paul Zuniga Avendano*, Orange County Superior Court Case No.
8 06NM11151, alleging one count of violation of Penal Code section 647.6, subdivision (a), child
9 annoyance, a misdemeanor. The complaint was amended to add an additional count of violation
10 of Penal Code section 647, subdivision (b), agreeing to engage in prostitution, a misdemeanor.

11 16. A jury found Respondent guilty of the charges on August 24, 2007, and
12 Respondent was sentenced on November 9, 2007. He was placed on three (3) years formal
13 probation. Conditions of probation included completing thirty (30) days of volunteer work for
14 Cal Trans; Fourth Amendment search and seizure waivers; lifetime registration as a sex offender
15 pursuant to Penal Code section 290; no association with minors, with the exception of relatives;
16 no frequenting places where minors congregate; and have employment approved by the probation
17 department.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Commission of a Sexually Related Offense)**

20 17. Respondent is subject to disciplinary action under section 2878,
21 subdivision (k) of the Code in that Respondent committed acts punishable as sexually related
22 crimes, as described in paragraphs 13-16, above, which resulted in a lifetime registration as a sex
23 offender pursuant to Penal Code section 290.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Suspension of Registered Nurse License)**

26 18. Respondent is subject to disciplinary action under section 2878.8 of the
27 Code in that on or about March 28, 2008, following an administrative hearing *In the Matter of*
28 *the Interim Suspension Order Sought by Ruth Ann Terry, Executive Director, California Board*

1 of Registered Nursing, Respondent's Registered Nurse License No. 701293 was suspended
2 pursuant to the Order issued by the Administrative Law Judge pending a decision on the
3 underlying Accusation (case no. 2008-253).

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 7 1. Revoking or suspending Vocational Nurse License Number VN 120583,
8 issued to Paul Zuniga Avendano;
- 9 2. Ordering Paul Zuniga Avendano to pay the Bureau of Vocational Nursing
10 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
11 case, pursuant to Business and Professions Code section 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.
13

14 DATED: December 29, 2008

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16 

17 TERESA BELLO-JONES, J.D., M.S.N., R.N.
18 Executive Officer
19 Bureau of Vocational Nursing and Psychiatric Technicians
20 Department of Consumer Affairs
21 State of California
22 Complainant